APPENDIX

Section 1094.5, California Code of Civil Procedure

"(a) Where the writ is issued for the purpose of inquiring into the validity of any final administrative order or decision made as the result of a proceeding in which by law a hearing is required to be given, evidence is required to be taken and discretion in the determination of facts is vested in the inferior tribunal, corporation, board or officer, the case shall be heard by the court sitting without a jury. All or part of the record of the proceedings before the inferior tribunal, corporation, board or officer may be filed with the petition, may be filed with respondent's points and authorities or may be ordered to be filed by the court. If the expense of preparing all or any part of the record has been borne by the prevailing party, such expense shall be taxable as costs.

"(b) The inquiry in such a case shall extend to the questions whether the respondent has proceeded without, or in excess of jurisdiction; whether there was a fair trial; and whether there was any prejudicial abuse of discretion. Abuse of discretion is established if the respondent has not proceeded in the manner required by law, the order or decision is not supported by the findings, or the findings are not supported by the evidence.

"(c) Where it is claimed that the findings are not supported by the evidence, in cases in which the court is authorized by law to exercise its independent judgment on the evidence, abuse of discretion is established if the court determines that the findings are not supported by the weight of the evidence; and in all other cases abuse of discretion is established if the court

determines that the findings are not supported by substantial evidence in the light of the whole record.

"(d) Where the court finds that there is relevant evidence which, in the exercise of reasonable diligence, could not have been produced or which was improperly excluded at the hearing before respondent, it may enter judgment as provided in subdivision (e) of this section remanding the case to be reconsidered in the light of such evidence; or, in cases in which the court is authorized by law to exercise its independent judgment on the evidence, the court may admit such evidence at the hearing on the writ without remanding the case.

"(e) The court shall enter judgment either commanding respondent to set aside the order or decision, or denying the writ. Where the judgment commands that the order or decision be set aside, it may order the reconsideration of the case in the light of the court's opinion and judgment and may order respondent to take such further action as is specially enjoined upon it by law but the judgment shall not limit or control in any way the discretion legally vested in the respondent.

"(f) The court in which proceedings under this section are instituted may stay the operation of the administrative order or decision pending the judgment of the court, or until the expiration of the time for filing such notice whichever occurs first; provided that no such stay shall be imposed or continued if the court is satisfied that it is against the public interest. If an appeal is taken from a denial of the writ, the order or decision of the agency shall not be stayed except upon the order of the court to which such appeal is taken; provided that, in cases where a stay is in effect at the time of filing the notice of appeal, such stay

shall be continued by operation of law for a period of twenty (20) days from the filing of such notice. If an appeal is taken from the granting of the writ, the order or decision of the agency is stayed pending the determination of the appeal unless the court to which such appeal is taken shall otherwise order. Where any final administrative order or decision is the subject of proceedings under this section, if the petition shall have been filed while the penalty imposed is in full force and effect the determination shall not be considered to have become moot in cases where the penalty imposed by the administrative agency has been completed or complied with during the pendency of such proceedings."

Section 1094.5 was enacted by Statutes 1945, Chapter 868, effective September 15, 1945. Chapter 868 is entitled:

> "An Act to add section 1094.5 to the Code of Civil Procedure, relating to the judicial review of administrative decisions."

Section 1094.5 was amended to its present form by Statutes 1949, Chapter 358, effective October 1, 1949. Chapter 358 is entitled:

> "An Act to amend section 1094.5 of the Code of Civil Procedure, relating to the review of administrative orders or decisions."

Applicable Sections of the California Unemployment Insurance Code

Section 410 of the Unemployment Insurance Code: "A decision of the Appeals Board is final, except for such action as may be taken by judicial tribunal as permitted or required by law."

Section 410 of the Unemployment Insurance Code was formerly section 82 of the Unemployment Insurance Act which was enacted by Statutes 1943, Chapter 1093, effective October 4, 1943.

Section 1253(c) of the Unemployment Insurance Code:

> "An unemployed individual is eligible to receive unemployment compensation benefits with respect to any week only if the director finds that:
> "(c) He was able to work and available for work for that week, and had made such effort to seek work on his own behalf as may be required in accordance with such regulations as the director shall prescribe."

Section 1925(c) of the Unemployment Insurance Code was formerly section 57(c) of the Unemployment Insurance Act which was amended and reenacted by Statutes 1949, Chapter 1141, effective October 1, 1949.

Referee's Decision LA-6934, Dated December 31, 1954, in the Matter of the Claim of Richard Henry Clinton.

DE-3200 LA (3-52)

STATE OF CALIFORNIA
DEPARTMENT OF EMPLOYMENT

DIVISION OF APPEALS
LOS ANGELES AREA REFEREE OFFICE

In the Matter of the Claim of:
Richard Henry Clinton
442 South Westminster
Los Angeles 4, California
Claimant-Appellant

SSA No. 537-14-8022

REFEREE'S DECISION
LA-6934

Date Appeal Filed:
December 31, 1954
Time and Place of Hearing:
March 10, 1955
Hollywood, California

Parties Present:
Claimant
Department Representative

Based on the record before him, the Referee's statement of fact, reason for decision and decision are as follows:

STATEMENT OF FACT

The claimant was last employed by a steamship company at a wage of $23.36 per day when he left that employment on September 21, 1954, for reasons not material to this case.

Effective July 4, 1954, the claimant registered for work and filed a claim for unemployment insurance benefits in the Wilmington Office of the Department. He filed an additional claim on September 21, 1954, in the same office. On December 24, 1954, the Department determined that the claimant was not eligible for benefits beginning October 10, 1954, under Section 1253(c) of the Unemployment Insurance Code on the ground

that his restrictions on reemployment had the effect of removing him from the labor market.

The claimant was expelled from the Master Marine Pilots Union on October 13, 1954. This prevented his reemployment as a navigator on ocean-going steamships. The claimant had previous experience as an advertising solicitor. He is a college graduate and has a degree in business administration. While stationed in Korea, the claimant had accumulated 60 hours flying time as air navigator. Based upon this flying experience he had secured a limited navigator's license. He had made various contacts with air transportation companies, both for passenger and freight transportation and had received some encouragement for possible employment as a student navigator but had not been employed since September 17, 1954. The labor market for one with a limited license is a very limited market with few employment opportunities. There are far more employment opportunities in the advertising solicitation field and many opportunities for a young man with a college degree in business administration, such as is possessed by the claimant. The claimant is attending law school daily from 1 P.M. to 3 P.M. and has made no effort to secure employment other than that of flight-navigator. The claimant restricts acceptable work to that of a flight-navigator.

REASON FOR DECISION

Under Section 1253(c) of the Unemployment Insurance Code, a claimant, in order to be eligible for benefits, must be able and available for work. In the instant case, the claimant, by his restrictions to the occupation of flight-navigator, a field in which he has a limited license of doubtful value, has imposed limi-

tations and restrictions which place a definite limit on the labor market available to him. The Appeals Board has in previous decisions held that if an individual through personal preference or by force of circumstances, imposes limitations and restrictions on acceptable work which materially reduce the possibility of obtaining employment, such limitations and restrictions have been held to withdraw the claimant from the labor market and thereby render the claimant not available for work as required by the Code. The Referee concludes that the claimant has through limitations and restrictions on his reemployment withdrawn from the labor market within the meaning of Section 1253(c) of the Unemployment Insurance Code. (Appeals Board Benefit Decision No. 4954).

DECISION

The determination of the Department is affirmed. Benefits are denied as provided in the determination.

Dated at Los Angeles, California, March 11, 1955.

L. E. De Voss, Referee

07044 (1-x-2-4-4-1)

DATE OF MAILING: MARCH 18, 1955

LA-6934

Benefit Decision No. 18321, August 26, 1955, by the California Unemployment Insurance Appeals Board.

Benefit Decision 18321, Case 26733, in the Matter of Richard Henry Clinton:

BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE
APPEALS BOARD

In the Matter of: Richard Henry Clinton (Claimant-Appellant) 442 South Westminster Los Angeles 4, California S.S.A. No. 537-14-8022	BENEFIT DECISION No. 18321 Case No. 26733 Referee Decision No. LA-6934

The claimant appealed from the referee's decision which held that the claimant was not entitled to benefits under the Unemployment Insurance Code.

After a careful review of the record which includes the testimony and evidence adduced before the referee and after having found that no material errors of fact or law appear to have been made, the Appeals Board adopts the statement of facts, reasons for decision, and decision of the referee as its statement of facts, reasons for decision, and decision.

The decision of the referee is affirmed. Benefits are denied as provided in the referee's decision.

Sacramento, California, Aug. 26, 1955.

CALIFORNIA UNEMPLOYMENT
INSURANCE APPEALS
BOARD
MICHAEL B. KUNZ, Chairman
GLENN V. WALLS
ARNOLD L. MORSE

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